

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:21-cr-0013
)	
TIMOTEO UPIA-FRIAS,)	
)	
Defendant.)	
)	

ORDER

BEFORE THE COURT is the Report and Recommendation of the magistrate judge recommending that the Court accept Timoteo Upia-Frias' ("Upia-Frias") plea of guilty (ECF No. 42) to Count One of the Indictment, charging Reentry of a Removed Alien, in violation of 8 U.S.C. § 1326(a) and (b)(2). For the reasons stated below, the Court will adopt the Report and Recommendation.

Pursuant to 28 U.S.C. § 636, "[w]ithin fourteen days after being served with a copy [of the Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). Here, neither party filed an objection within fourteen days of service of the Report and Recommendation. Therefore, "the scope of [the Court's] review is far more limited and is conducted under the far more deferential standard of 'plain error'." *Tice v. Wilson*, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) *aff'd*, 276 Fed. App'x 125 (3d Cir. 2008); *see Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) ("While . . . [28 U.S.C. § 636(b)(1)] may not require, in the absence of objections, the district court to review the magistrate's report before accepting it, we believe that the better practice is for the district judge to afford some level of review to dispositive legal issues raised by the report.").

After carefully reviewing the record and the Report and Recommendation for plain error, the Court does not find plain error in any of the magistrate judge's factual and legal findings. Therefore, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the Court finds that Defendant Upia-Frias entered his guilty plea knowingly and voluntarily, and that there was a factual basis for the plea. The Court, therefore, will adopt the Report and Recommendation and find Upia-Frias guilty as to Count One of the Indictment.

Accordingly, it is hereby

ORDERED that the Report and Recommendation (ECF No. 42) is **ADOPTED**; it is further

ORDERED that Defendant Timoteo Upia-Frias' plea of guilty as to Count One of the Indictment is **ACCEPTED**, and Defendant Upia-Frias is adjudged **GUILTY** on that count; it is further

ORDERED that, pursuant to Fed. R. Crim. P. 32(c)(1)(A), the U.S. Probation Office shall conduct a presentence investigation for the preparation of a presentence report; it is further

ORDERED that the U.S. Probation Office shall disclose the preliminary presentence report to the parties no later than January 13, 2022; it is further

ORDERED that the parties shall submit any objections or corrections to the preliminary presentence report to the U.S. Probation Office no later than January 27, 2022; it is further

ORDERED that the U.S. Probation Office shall disclose the final presentence report to the parties and the Court no later than February 10, 2022; it is further

ORDERED that the parties shall file their sentencing memoranda no later than February 24, 2022; and it is further

ORDERED that a sentencing hearing shall be held on Thursday, March 3, 2022, at 9:30 A.M. in St. Thomas Courtroom No. 1 before Judge Robert A. Molloy.

Date: November 1, 2021

/s/ Robert A. Molloy
ROBERT A. MOLLOY
Chief Judge